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6 **BEFORE THE**
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. VN-2008-1688

11 **JODI CLARE GONZALEZ, A.K.A. JODI**
12 **CLARE WITUCKI**
13 **1004 Greenwood Place**
14 **Salinas, CA 93901**

DEFAULT DECISION AND ORDER

Vocational Nurse No. VN 210639,

[Gov. Code, §11520]

Respondent.

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16 FINDINGS OF FACT

17 1. On or about November 18, 2010, Complainant Teresa Bello-Jones, J.D., M.S.N.,
18 R.N., in her official capacity as the Executive Officer of the Board of Vocational Nursing and
19 Psychiatric Technicians, filed Accusation No. VN-2008-1688 against Jodi Claire Gonzalez
20 (Respondent) before the Board of Vocational Nursing and Psychiatric Technicians (Board),
21 Department of Consumer Affairs. (The Accusation is attached as Exhibit "A".)

22 2. On or about August 17, 2004, the Board issued Vocational Nurse License No. VN
23 210639 to Respondent. The Vocational Nurse License was in full force and effect at all times
24 relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

25 3. On or about November 18, 2010, Respondent was served by Certified and First Class
26 Mail copies of the Accusation No. VN-2008-1688, Statement to Respondent, Notice of Defense,
27 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
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1 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
2 Code section 136 and/or agency specific statute or regulation, is required to be reported and
3 maintained with the Board, which was and is: 1004 Greenwood Place, Salinas, CA 93901.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. The Accusation and accompanying documents were returned to the Board by the U.S.
8 Postal Service, marked as "Undeliverable as Addressed" and "Attempted, Not Known."

9 6. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

13 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
14 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. VN-
15 2008-1688.

16 8. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions
19 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

20 9. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
23 as well as taking official notice of all the investigatory reports, exhibits and statements contained
24 therein on file at the Board offices regarding the allegations contained in Accusation No. VN-
25 2008-1688, finds that the charges and allegations in Accusation No. VN-2008-1688, are
26 separately and severally true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,637.50.00 as of December 24, 2010.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jodi Claire Gonzalez has subjected her Vocational Nurse License No. VN 210639 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke Respondent's Vocational Nurse based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Code section 2878(a) (Unprofessional Conduct);

b. Code sections 490, 2878, subdivision (f), and 2878.6 (Conviction of Crimes Substantially Related to Vocational Nursing);

c. Code section 2878.5(b) (Unprofessional Conduct: Alcohol Use to Dangerous Extent); Code section 2578.5(c) (Unprofessional Conduct: Alcohol Convictions); and

d. Code section 2878(a) and California Code of Regulations, title 16, section 2518.6(b) (Unprofessional Conduct: Violations of Standards of Practice).

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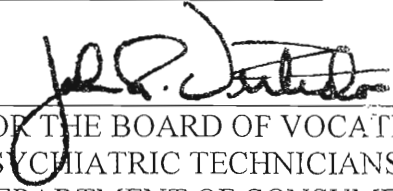
ORDER

IT IS SO ORDERED that Vocational Nurse License No. VN 210639, heretofore issued to Respondent Jodi Claire Gonzalez, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 21, 2011.

It is so ORDERED March 22, 2011



FOR THE BOARD OF VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS

default decision_LIC.rtf/ DOJ Matter ID:SF2010900352

Attachment: Exhibit A: Accusation

Exhibit “A”

Accusation

JUL - 8 2010

Board of Vocational Nursing
and Psychiatric Technicians

EDMUND G. BROWN JR.
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
SHANA A. BAGLEY
Deputy Attorney General
State Bar No. 169423
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2129
Facsimile: (510) 622-2270
Attorneys for Complainant

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2008-1688

**JODI CLARE GONZALEZ, A.K.A. JODI
CLARE WITUCKI**
1004 Greenwood Place
Salinas, CA 93901

A C C U S A T I O N

Vocational Nurse No. VN 210639,

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

2. On or about August 17, 2004, the Board issued Vocational Nurse License Number VN 210639 to Jodi Clare Gonzalez, also known as Jodi Clare Witucki, (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on January 31, 2012, unless renewed.

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1 "(b) Use . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to
2 himself or herself, any other person, or the public, or to the extent that the use impairs his or her
3 ability to conduct with safety to the public the practice authorized by his or her license.

4 "(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
5 drug, or the prescription, consumption, or self-administration of any of the substances described
6 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
7 conclusive evidence thereof. . . ."

8 9. Code section 2878.6 states:

9 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
10 made to a charge substantially related to the qualifications, functions and duties of a
11 licensed vocational nurse is deemed to be a conviction within the meaning of this article.
12 The board may order the license suspended or revoked, or may decline to issue a license,
13 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on
14 appeal or when an order granting probation is made suspending the imposition of
15 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
16 Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not
17 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or
18 indictment."

19 REGULATORY PROVISIONS

20 10. California Code of Regulations, title 16, section 2521, states, in pertinent part:

21 "For the purposes of denial, suspension, or revocation of a license pursuant to
22 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
23 crime or act shall be considered to be substantially related to the qualifications, functions
24 or duties of a licensed vocational nurse if to a substantial degree it evidences present or
25 potential unfitness of a licensed vocational nurse to perform the functions authorized by
26 his license in a manner consistent with the public health, safety, or welfare. . . ."

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1 11. California Code of Regulations, title 16, section 2518.6, provides, in part:

2 . . .

3 “(b) A licensed vocational nurse shall adhere to standards of the profession and
4 shall incorporate ethical and behavioral standards of professional practice which include
5 but are not limited to the following:

6 . . .

7 “(4) Abstaining from chemical/substance abuse;

8 . . .

9 “(c) A violation of this section constitutes unprofessional conduct for purposes of
10 initiating disciplinary action.”

11 **COST RECOVERY**

12 12. Code section 125.3 provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licensee found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **FIRST CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct)

18 (Bus. & Prof. Code § 2878(a))

19 13. Respondent is subject to disciplinary action under Code section 2878, subdivision (a),
20 in that, on two occasions, she was driving a vehicle with a blood alcohol level at .08% or above.
21 The facts and circumstances surrounding the conviction are as follows:

22 a. On or about December 21, 2008, the California Highway Patrol arrested the
23 Respondent for driving under the influence of alcohol. Respondent was involved in a motor
24 vehicle accident, damaging two parked vehicles. A forensic blood alcohol analysis indicated that
25 Respondent’s blood alcohol level was .18 percent. The California Highway Patrol forwarded a
26 copy of the police report to the District Attorney’s Office and Respondent was charged with and
27 convicted of violating Vehicle Code section 23152, subdivision (b).

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b. On or about June 1, 2009, the California Highway Patrol arrested the Respondent for driving under the influence of alcohol, driving with a blood alcohol level of .08% or more and driving with a suspended driver's license. The California Highway Patrol Officer had observed Respondent driving erratically. The California Highway Patrol forwarded a copy of the police report to the District Attorney's Office and Respondent was charged with and convicted of violating Vehicle Code sections 14601.2, subdivision (b), and 23152, subdivision (b).

SECOND CAUSE FOR DISCIPLINE

(Conviction of Crimes Substantially Related to Vocational Nursing)

(Bus. & Prof. Code §§ 490, 2878(f) and 2876.6)

14. Respondent is subject to disciplinary action under Code sections 490, 2878, subdivision (f), and 2878.6 in that she was convicted of crimes substantially related to the qualifications, functions, and duties of a Licensed Vocational Nurse, within the meaning of California Code of Regulations, title 16, section 2521. The circumstances are as follows:

a. On or about January 14, 2009, in a criminal proceeding entitled *People v. Jodi Clare Gonzalez*, Superior Court of California, County of Monterey Case No. MS272697A. Respondent was convicted by a plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b), (Driving While Having a .08% or Higher Blood Alcohol), a misdemeanor. Respondent was ordered to serve 10 days in county jail and 5 years of informal probation, to pay fines, complete a First Offender Alcohol Program, and to comply with other terms and conditions. The facts underlying this conviction are more particularly set forth in Paragraph 13, subdivision (a), above.

b. On or about July 10, 2009, in a criminal proceeding entitled *People v. Jodi Clare Gonzalez*, Monterey County Superior Court, Case No. MS277167A, Respondent was convicted by a plea of nolo contendere of violating Vehicle Code sections 14601.2, subdivision (b), (Driving with a Restricted License) and 23152, subdivision (b), (Driving While Having a .08% or Higher Blood Alcohol), both misdemeanors. As part of her plea, respondent admitted to having a prior conviction of Vehicle Code section 23152. Respondent was ordered to serve 45 days in county jail and 5 years of informal probation, to pay fines, to complete a Second Offender

1 Program, and to comply with various other terms and conditions. The facts underlying these
2 convictions are more particularly set forth in Paragraph 13, subdivision (b), above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct: Alcohol Use to Dangerous Extent)

5 (Bus. & Prof. Code § 2878.5(b))

6 15. Respondent is subject to disciplinary action under Code section 2878.5, subdivision
7 (b), in that Respondent used alcohol to an extent or in a manner dangerous or injurious to herself,
8 any other person, or the public, as more particularly set forth in Paragraphs 13 and 14, above.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 (Unprofessional Conduct: Alcohol Convictions)

11 (Bus. & Prof. Code § 2578.5(c))

12 16. Respondent is subject to disciplinary action under Code section 2878.5, subdivision
13 (c), in that Respondent was convicted of criminal offenses involving the consumption of alcoholic
14 beverages. The circumstances are more particularly set forth in Paragraphs 13 and 14, above.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct: Violations of Standards of Practice)

17 (Bus. & Prof. Code § 2878(a) and Ca. Code Regs., tit. 16, § 2518.6(b))

18 17. Respondent is subject to disciplinary action under Code section 2878, subdivision (a),
19 in that Respondent committed acts of unprofessional conduct within the meaning of California
20 Code of Regulations, title 16, section 2518.6, subdivision (b). The circumstances are more
21 particularly set forth in Paragraphs 13 and 14, above.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
24 Accusation, and that following the hearing, the Board of Vocational Nursing and Psychiatric
25 Technicians issue a decision:

26 1. Revoking or suspending Vocational Nurse License Number VN 210639, issued to
27 Jodi Claire Gonzalez;

28 ///

1 2. Ordering Jodi Clare Gonzalez to pay the Board the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.
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6
7 DATED: November 18, 2010



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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